

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)
) Case No. 1:20-cr-82
v.)
) Hon. Liam O'Grady
)
JOHN WILLIAM KIRBY KELLEY,) Sentencing: March 15, 2021
)
Defendant.)

**DEFENDANT'S MOTION FOR LEAVE TO FILE UNDER SEAL AND
INCORPORATED MEMORANDUM IN SUPPORT**

Pursuant to Local Criminal Rule 49(E), defendant, John William Kirby Kelley, through counsel, moves for an order permitting the defense to file under seal the Defense Position on Sentencing, which is to be filed with this Court on March 9, 2021. A proposed order is attached for the consideration of the Court,¹ and the defense will promptly file a redacted copy of the Position on Sentencing on the public record.

In support of this motion, the defense further states:

I. Item to be Filed Under Seal, and Necessity for Sealing

A. Mr. Kelley asks the Court to seal the Position on Sentencing filed on March 9, 2021. The defense believes sealing is necessary because portions of the

¹ The document to be filed under seal will be filed with the Court non-electronically pursuant to Local Criminal Rule 49(E) and the Electronic Case Filing Policies and Procedures (*see p. 21*). Pursuant to the Local Rules, the sealed document is to be treated as sealed pending the outcome of this motion.

Position on Sentencing contain sensitive and confidential information pertaining to Mr. Kelley and third parties.

B. Filing under seal is necessary because the portions that would be sealed contain discussion of aspects of Mr. Kelley's mental health and childhood and of confidential and sensitive matters pertaining to third parties.

C. Counsel for Mr. Kelley has considered procedures other than filing the full version of the Position on Sentencing under seal and none will suffice to protect disclosure of this confidential information. However, a redacted version will be filed on the public record.

II. Previous Court Decisions Which Concern Sealing Documents

The Court has the inherent power to seal materials submitted to it. See *United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *State of Arizona v. Maypenny*, 672 F.2d 761, 765 (9th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); see also *Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1975); *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975). "The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984).

III. Period of Time to Have the Document Under Seal

The materials to be filed under seal would need to remain sealed permanently.

Accordingly, Mr. Kelley respectfully requests that this Court enter an order allowing the defense to file its Position on Sentencing, dated March 9, 2021, under seal.

Respectfully submitted,

JOHN WILLIAM KIRBY KELLEY

By counsel,
Jeremy C. Kamens
Federal Public Defender

By: /s/ Nathaniel Wenstrup
Nathaniel Wenstrup
Admitted pro hac vice
Assistant Federal Public Defender
Office of the Federal Public Defender
1650 King Street, Suite 500
Alexandria, Virginia 22314
703-600-0800
703-600-0880 (fax)
Nate_Wenstrup@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record.

/s/ Nathaniel Wenstrup
Nathaniel Wenstrup
Admitted pro hac vice
Assistant Federal Public Defender
Office of the Federal Public Defender
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Alexandria, Virginia 22314
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